REMARKS

The application has been amended in a manner believed to place same in a condition for allowance as of the next Official Action.

Claims 1-8, 13, and 18-25 have been amended with minor corrections as to form according to U.S. practice and preferences. The amendments are non-substantive and introduce no new matter. Entry of the amendments is earnestly solicited.

The Official Action rejected claims 1-25 under 35 U.S.C. 103(a) as being unpatentable over Lehmann-Haupt et al. (2002/0107786; hereinafter LEHMANN) in view of Messmer et al. (7,096,197; hereinafter MESSMER).

The Official Action states that LEHMANN discloses the invention substantially as claimed, as set forth in the previous Office Action.

The Official Action concedes that LEHMANN fails to disclose a simulation calculation that is a discrete set of computer instructions and data representing physical properties of a physical system, where the physical system is specified by a portion of the condition, and the simulation calculation result is an analysis of the physical system.

The Official Action states that MESSMER teaches a method and corresponding system for simulating competitive bidding comprising the simulation calculation that is a discrete set of computer instructions and data representing physical properties of a physical system, the physical system specified by a portion of the condition, and the simulation

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calculation result is an analysis of the physical system, as recited in the independent claims 1, 8, 12, and 25.

The Official Action makes reference to column 9, lines 5-37 of MESSMER in support of the rejection. It is respectfully noted that the Official Action does not identify with specificity which steps or elements disclosed in MESSMER satisfy the recitations of the claims. For example, the Official Action fails to identify a physical system specified by a portion of the user-provided condition, or a simulation calculation result as an analysis of the physical system.

The Official Action concludes that it would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the teachings of MESSMER within LEHMANN for the motivation of providing the simulation that will yield optimal bidding results.

The rejection of the claims is respectfully traversed by at least the reasons that follow.

As to claim 1, it is respectfully submitted that neither LEHMANN nor MESSMER, individually or in combination, teach or suggest executing a simulation calculation that is a discrete set of computer instructions and data representing a physical properties of a physical system, where the physical system is specified by a portion of the condition received by from the user, and a result of the simulation calculation is an analysis of the physical system, as recited by claim 1.

As described in the specification and the Figures, e.g. element 3 in Figure 1 and steps S310 to S319 in Figure 3, the invention comprises a simulation calculation service, such

as that offered by a computer center (specification page 1, lines 7-16), wherein users (e.g. research workers and simulation experts; page 1, lines 24-25) submit simulation jobs (i.e. "simulations") without having to physically visit a computing center, maintain the application software, or have a dedicated computer physically prepared and accessible to the user by telnet or the like (e.g., page 1 line 19 to page 2 line 18; page 14, lines 2-23).

The inventive method of claim 1 provides a framework wherein a user can provide a simulation condition for computational analysis as a user presented condition (e.g., page 21, lines 7-12), receive a bidding condition from a consultant selected as coinciding with the condition presented by the user (e.g., page 13, lines 19-23), and answer an inquiry as to whether to proceed with the simulation calculation based on the bidding condition (e.g., page 25, lines 3-9). If the user answers affirmatively, the simulation submitted and executed by the service, and the results of the simulation are recorded (e.g., page 25, lines 10-16). The simulation itself is a set of computer instructions, discrete from the bidding step, that are executed only <u>after</u> the bidding condition is accepted by the user, as recited by claim 1.

In contrast, LEHMANN and MESSMER each disclose specialized market simulators. That is, LEHMANN and MESSMER each simulate auctioning to produce an optimal bidding condition, in order to proceed to transaction (LEHMANN) or indicate an optimal value for an asset (MESSMER).

LEHMANN simulates auctioning "in the case where the seller's rule is to decrease the asking price to a best bid after a certain amount of time," (paragraph 0054). This simulation applies artificial intelligence algorithms to buyer's and seller's conditions in order to arrive at an optimum transaction price matching both buyer's and seller's conditions so that a transaction may be completed between a matching buyer and seller (paragraphs [0052] to [0053]). The simulation is a simulation of parties at an auction, not of the physical properties of a physical system as claimed, and the auction simulation does not follow a comparing step and an inquiry step, as required by claim 1.

MESSMER similarly executes a simulation of parties in an auction-style market; here the market simulation determines an optimum bid given a calculated value for a tranch (i.e., groups of financial assets such as loans; see column 1, lines 17-26) within a portfolio of assets. The simulation simulates a bid opening process and determines an optimal bid having the highest probability of success (column 2, lines 17-20). By varying the bid values, the system determines a probability of winning the auction against the user's bid price (column 9, lines 48-50).

As a simulated auction under theoretical conditions and between automated participants, the MESSMER simulation is similar to the simulation in LEHMANN, conceded by the Official Action as failing to satisfy the simulation recited in claim 1.

For example, MESSMER fails to teach or suggest a simulation of a physical system specified by a portion of the user presented condition, as required by claim 1. On the contrary, MESSMER does not specify the simulation as part of a user presented condition.

In contrast, MESSMER discloses specifying portfolio assets (e.g. debt instruments) as the user presented condition (column 2 line 65 to column 3 line 9).

Therefore, it is respectfully submitted that neither LEHMANN nor MESSMER, individually or in combination, teach or suggest the simulation calculation as recited by claim 1.

Further, neither LEHMANN nor MESSMER, individually or in combination, teach or suggest comparing a user presented condition with the bidding condition and selecting a bidding condition coinciding with the user presented condition, inquiring of the user whether the simulation calculation is to be executed on the basis of the bidding condition, and executing the simulation calculation in accordance with an answer to the inquiry, as required by claim 1.

On the contrary, LEHMANN and MESSMER each execute a simulation calculation in order to produce an optimal bidding condition. That is, the bidding condition is the result of the simulations, not a subject of user inquiry, as required by claim 1.

Nor do LEHMANN and MESSMER, individually or in combination, teach or suggest receiving a bidding condition from a consultant in correspondence with a user presented condition, and comparing the user presented condition with the

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bidding condition from the consultant to <u>select</u> a bidding condition coinciding with the user presented condition with which to <u>inquire</u> whether to execute the simulation, as required by claim 1.

In contrast, as stated above, LEHMANN discloses executing a simulation upon <u>receiving</u> a prescribed bidding condition from a first party and a prescribed selling condition from a second party, then <u>executing</u> a transaction between the bidding and selling parties upon completion of the simulation (paragraphs [0052] to [0053]). Neither LEHMANN nor MESSMER, individually or in combination, teach or suggest <u>inquiring</u> of either party whether the simulation calculation is to be executed on the basis of a bidding condition selected by the system. As disclosed by LEHMANN, the selected bidding condition is the <u>result</u> of the simulation, not a matter of user inquiry as to whether the simulation should execute, as required by claim 1.

Therefore, it is respectfully submitted that neither LEHMANN nor MESSMER, individually or in combination, teach or suggest all the steps recited in claim 1.

It is also respectfully submitted that the combination of LEHMANN and MESSMER proposed by the Official Action would not have been obvious to one of skill in the art.

LEHMANN, as stated above, simulates auctioning according to both bidding conditions and selling conditions in order to arrive at an optimal price suitable to both parties so that a transaction for a sale of goods may be automatically completed (paragraph [0054]). LEHMANN is a peer-to-peer system

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for the open market trading of goods (paragraph [0004]) wherein the system matches offers to sell with offers to buy. The simulation aspect of LEHMANN facilitates conditions where bidding parties and selling parties present variable conditions to their bid prices and ask prices so that the parties may more effectively maximize their return on the transaction (paragraphs [0053] to [0054]).

The MESSMER simulation simulates competitive bidding to produce a prediction of bid's likelihood of success and thereby establish a value for a particular grouping of assets (column 2, lines 17-20). The bids are generated algorithmically, partly based on simulation rules (e.g. column 9, lines 17-37) and statistical distribution or iterative sampling (column 9, lines 39-50). In other words, bidding conditions are machine-generated based on theoretical conditions.

It is thus respectfully submitted that the MESSMER simulation would be inappropriate for the LEHMANN market trading application because it does not provide for bidding condition from actual (i.e., human) bidders. That is, a system as disclosed by LEHMANN combined with the simulation of MESSMER would fail to incorporate the actual, real-life bidding conditions of bidders in the market, and therefore would fail to complete transactions between bidding and selling parties.

At best, such a combination would produce optimal pricing for seller's assets prior to entry into a market with actual, human parties, but only if the seller's assets were

those that MESSMER's simulation algorithm can evaluate. MESSMER's simulation algorithm expects values typical of portfolios of debt assets, including internal rate of return, a certain time to profit, and a positive net present value (column 8, lines 44-56; column 9, lines 9-17). The market simulation of LEHMANN, however, is directed toward the sale of goods, not financial assets (paragraph [0004]).

Therefore, is respectfully submitted that it would be inappropriate to incorporate the simulation of MESSMER within LEHMANN because the combination would not function to complete transactions between bidding and selling parties. Furthermore, for the reasons foregoing, it is respectfully submitted that the combination of MESSMER within LEHMANN fails to yield the present invention as claimed. Accordingly, it is respectfully submitted that one of skill in the art would find no motivation to combine the simulation of MESSMER with the on-line market application of LEHMANN.

For all the foregoing, it is respectfully submitted that claim 1 is not rendered obvious by LEHMANN in view of MESSMER. It is therefore respectfully submitted that claim 1 and claims depending therefrom are patentable. Reconsideration and withdrawal of the rejection are respectfully requested.

It is respectfully submitted that independent claims 8, 12, and 25 are also non-obvious over LEHMANN in view of MESSMER for the reasons stated above as to claim 1. Therefore, it is respectfully submitted that claims 8, 12, 25, and claims depending therefrom are patentable. Reconsideration and withdrawal of the rejection are respectfully requested.

Additionally, the Official Action alleges that the dependent claims are each rejected as obvious over LEHMANN in view of MESSMER, stating that LEHMANN discloses the invention substantially as claimed, as set forth in the previous Office Action. As to the rejection of each claim, the previous Office Action allegedly found support from the same list paragraphs of LEHMANN: paragraphs 5-9, 18-23, 35-38, and 53-54. Neither the previous Office Action nor the Office Action currently pending identify with specificity the steps and elements in either LEHMANN or MESSMER that teach or suggest the recitations of the dependent claims.

Respectfully, the Examiner bears the initial burden of presenting a prima facie case of obviousness. *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992). If that burden is met, then the burden shifts to the Appellants to overcome the prima facie case with argument and/or evidence. (See *Id.*) In performing this obviousness analysis, the Examiner is required to make findings of fact and must provide an articulated reasoning supporting the rejection. The Examiner's articulated reasoning in the rejection must possess a rational underpinning to support the legal conclusion of obviousness. *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006).

Respectfully, the Official Action has not satisfied this burden.

Applicant has studied the applied references and cannot identify any steps and elements in either LEHMANN or MESSMER that teach or suggest the recitations of the dependent claims, as stated below.

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It is respectfully submitted that neither LEHMANN nor MESSMER, individually or in combination, teach or suggest the steps of estimating a price of the simulation calculation on the basis of a user presented condition or transmitting an estimation result of the estimated price to the user terminal apparatus, as recited by dependent claim 2.

It is respectfully submitted that neither LEHMANN nor MESSMER, individually or in combination, teach or suggest a step of determining whether the simulation calculation can be executed on the basis of the user presented condition, or transmitting a determination result to the user terminal apparatus, as recited by dependent claim 3.

It is respectfully submitted that neither LEHMANN nor MESSMER, individually or in combination, teach or suggest the step of estimating the price of the simulation calculation again when the answer to the inquiry indicates an instruction for changing the condition of the simulation calculation, as required by dependent claim 4.

It is respectfully submitted that neither LEHMANN nor MESSMER, individually or in combination, teach or suggest the steps of billing a user an estimated price or paying an amount to a consultant, the amount obtained by <u>deducting a commission from the estimated price</u>, as recited by dependent claim 5.

It is respectfully submitted that neither LEHMANN nor MESSMER, individually or in combination, teach or suggest estimation means for executing an <u>estimation about the</u>

<u>simulation calculation</u> on the basis of the user presented condition, as recited by dependent claims 13-15.

It is respectfully submitted that neither LEHMANN nor MESSMER, individually or in combination, teach or suggest trial calculation means for executing the simulation calculation by way of a trial for a non member user, as recited by dependent claim 20.

It is respectfully submitted that neither LEHMANN nor MESSMER, individually or in combination, teach or suggest comparison means that compares the consultant bidding condition with a rank to identify a technical capability of a consultant who is to execute the simulation calculation, as recited by dependent claim 16.

It is respectfully submitted that neither LEHMANN nor MESSMER, individually or in combination, teach or suggest comparison means that selects the condition that coincide with the user presented condition on the basis of a priority of the simulation calculation condition, as recited by dependent claim 17.

It is respectfully submitted that neither LEHMANN nor MESSMER, individually or in combination, teach or suggest charging means for charging for the simulation calculation, as recited by dependent claim 18.

It is respectfully submitted that neither LEHMANN nor MESSMER, individually or in combination, teach or suggest encryption means for encrypting a signal to be transmitted, as recited by dependent claim 19.

It is respectfully submitted that neither LEHMANN nor MESSMER, individually or in combination, teach or suggest simulation result analysis means for transmitting, to the user terminal apparatus, intellectual added value information added by a consultant who has referred to a result of the simulation calculation together with the result of the simulation calculation, as recited by dependent claim 23.

It is respectfully submitted that neither LEHMANN nor MESSMER, individually or in combination, teach or suggest money reception means for receiving compensation for a consultant, as recited by dependent claim 24.

It is respectfully submitted that neither the pending Official Action, nor the previous pending Official Action referenced by the Official Action pending, provides sufficient findings of fact to support the rejection of the aforementioned dependent claim, and that the dependent claims are patentable for being neither taught nor suggested, individually or in combination, by the applied references. Therefore, it is respectfully submitted that the dependent claims are patentable on their own right in addition to being dependent from a patentable claims.

Reconsideration and withdrawal of the rejections are respectfully requested.
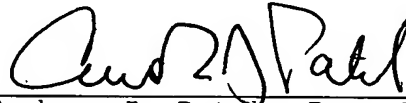
From the foregoing, it will be apparent that the applicant has fully responded to the December 12, 2007 Official Action. Applicants believe the present application is in condition for allowance and an early indication of the same is respectfully requested.

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In order to expedite the prosecution of this case, it is requested that the Examiner telephone the attorney for applicant at the number set forth below if the Examiner is of the opinion that further discussion of this case is necessary.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

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